

M E M O R A N D U M

TO: Commissioners

FROM: Phil Stutzman, Director of Compliance

DATE: January 15, 2002

SUBJECT: Protect our Pets and Wildlife – PDC Case #01-134

BACKGROUND

Protect our Pets and Wildlife (Protect our Pets) registered as a political committee on October 6, 1999 to support Initiative 713, a statewide initiative-to-the-people making it a gross misdemeanor to capture most animals with certain body-gripping traps and poisons. The committee raised \$935,995 in contributions and spent \$927,455 in its efforts to support the initiative. Voters passed I-713 on November 7, 2000. Lisa Wathne was the Campaign Manager for Protect our Pets. She was a salaried employee of the U.S. Humane Society while she served as Campaign Manager for Protect our Pets. Lynne Marachario was the Campaign Treasurer.

Prior to August 31, 2000, Protect Our Pets hired Fenn & King Communications (Fenn & King), a political consulting firm from Washington D.C., to act as its agent and arrange for its political advertising expenditures in the I-713 campaign. Protect our Pets paid Fenn & King \$565,205 for the cost of production and to purchase air time for its “T.V. Media Buys.” Fenn & King has an on-going relationship with the U.S. Humane Society for consulting on similar issues in other states. It is through its relationship with the U.S. Humane Society that Fenn & King established a relationship with Protect our Pets. No written contract existed between Fenn & King and Protect our Pets although both parties acknowledged that an oral contract existed between the

parties. Fenn & King worked with various national media buying firms to place orders and secure time slots for T.V. advertising across the state of Washington. The ads ran between October 20 and November 6, 2000 in media outlets around the state.

On October 20, 2000, the Public Disclosure Commission received a complaint from Ed Owens, Chair of Citizens for Responsible Wildlife Management, alleging violations of RCW 42.17 by Protect Our Pets during the 2000 election. In part, Mr. Owens alleged that Protect our Pets failed to timely report “orders placed” and expenditures made for broadcast media buys.

A brief enforcement hearing was held October 18, 2001 to consider staff allegations that Protect our Pets failed to timely report \$361,170 in “orders placed” on Schedule B of the C-4 report due October 17, 2000. Staff alleged that Protect our Pets should have reported this amount in Part 3 of Schedule B to the C-4 report as “orders placed.” The \$361,170 in alleged “orders placed” represents the estimated cost of ads 1) for which Fenn & King, pursuant to an agreement with Protect our Pets, made offers to purchase media time from August through October 12, 2000 and 2) that as of October 10, 2000 (the cutoff date for the October 17, 2000 C-4 report) had not been canceled with the media outlets and were within two weeks of the start of their anticipated “run-dates.” In general, the television stations operate under a two-week cancellation policy, by which an entity may cancel advertisements more than two weeks before the scheduled run dates without incurring an obligation to pay for the airtime. Generally, if an entity places an order with a station and cancels the order within two weeks of the scheduled run-date without providing a two-week cancellation notice, the entity can be charged for the advertising time the station is unable to re-fill.

Protect our Pets argued that the committee only made “offers to buy” and did not have any actual obligations reportable on Schedule B to the C-4 report. This argument was apparently based on a statement from Peter Fenn that Fenn & King was not made aware of a two-week cancellation policy by any of the T.V. stations, and therefore, no actual obligation existed. Protect our Pets said it could have canceled what it called “offers to buy” at any time without obligation, and

therefore, had no requirement to report the estimated value of these “offers to buy.” Protect our Pets argued that it was only required to report the actual payment for services on Schedule A to the C-4 report. At the October 18, 2001 brief enforcement hearing, staff argued that Protect our Pets had a requirement to report as obligations the value of the orders that had been placed with media outlets and not canceled within two weeks of their respective run-dates and its agreement with Fenn & King.

Christine Yorozu, who was the Presiding Officer at the October 18, 2001 brief enforcement hearing, continued the hearing for two weeks to November 1, 2001 with instructions to staff to talk further with Peter Fenn and the T.V. stations about any agreements that may have existed concerning the cancellation policy of the stations.

Following the October 18th brief enforcement hearing, PDC staff contacted Peter Fenn and several T.V. stations that ran ads for Protect our Pets. However, at the start of the November 1, 2001 brief enforcement hearing, the Presiding Officer stated that she would not accept additional evidence or hear additional argument at the brief enforcement hearing level, and instead asked that the case be set for an enforcement hearing before the full Commission.

LAW

RCW 42.17.020(19) states in part: ““Expenditure” includes a ... promise, or agreement, whether or not legally enforceable, to make an expenditure.” The definition goes on to state, “For the purposes of this chapter, agreements to make expenditures, contracts, and promises to pay may be reported as estimated obligations until actual payment is made.”

RCW 42.17.080 (2) states, in part: “At the following intervals each treasurer shall file with the commission and the county auditor or elections officer of the county in which the candidate resides, or in the case of a political committee, the county in which the committee maintains its office or headquarters...a report containing the information required by RCW 42.17.090: (a) On the twenty-first day and the seventh day immediately preceding the date on which the election is

held; and (b) On the tenth day of the first month after the election...and (c) On the tenth day of each month in which no other reports are required to be filed under this section: PROVIDED, That such report shall only be filed if the committee has received a contribution or made an expenditure in the preceding calendar month and either the total contributions received or total expenditures made since the last such report exceed two hundred dollars.”

RCW 42.17.090 (1) states, in part: “Each report required under RCW 42.17.080 (1) and (2) shall disclose the following: ... (f) The name and address of each person to whom an expenditure was made in the aggregate amount of more than fifty dollars during the period covered by this report and the amount, date and purpose of such expenditure... (h) The name and address of any person and the amount owed for any debt, obligation, note, unpaid loan, or other liability in the amount of more than two hundred fifty dollars or in the amount of more than fifty dollars that has been outstanding for over thirty days.” ... and (k) “Such other information as shall be required by the commission by rule in conformance with the policies and purposes of this chapter.”

WAC 390-16-041 **Forms – Summary of Total Contributions and Expenditures.** This rule states in part, “(1) The official form for reports of contributions and expenditures by candidates and political committees who use the “full” reporting option is designated “C-4”, revised 3/97, and includes Schedule A, revised 11/93, Schedule B, revised 11/93, Schedule C, revised 3/93, and Schedule L, revised 12/99.”

WAC 390-16-205 **Expenditures by Agents, Employees - Reporting.** Expenditures made on behalf of a candidate or political committee by any person, agency, firm, organization, etc. employed or retained for the purpose of organizing, directing, managing or assisting the candidate's or committee's efforts shall be deemed expenditures by the candidate or committee. Such expenditures shall be reported by the candidate or committee as if made or incurred by the candidate or committee directly.

FACTS

Protect our Pets registered as a political committee on October 6, 1999. The stated purpose of the committee on its Committee Registration (C-1pc) was to support Initiative 713, a statewide initiative on the 2000 general election ballot. Protect our Pets selected the full reporting option on its committee registration statement. Political committees selecting the full reporting option are required to file frequent and detailed reports of its contributions and expenditures in accordance with RCW 42.17.080 and 42.17.090. The committee raised \$935,995 and made expenditures totaling \$927,455 during the campaign. Of its total expenditures, Protect our Pets spent \$565,205 for the cost of production and purchase of “T.V. Media Buys.” Protect our Pets hired Fenn & King as its agent to arrange for and purchase its political advertising media buys. Both Fenn & King and Protect our Pets acknowledged that an oral contract existed between the two parties, that Fenn & King was responsible for producing television ads that would successfully promote passage of I-713, and that Fenn & King was responsible for securing the proper mix of T.V. stations and timeslots to achieve a favorable election outcome.

To this end, Lisa Wathne, the campaign manager for Protect our Pets, stated that the initial campaign strategy was to raise and spend approximately \$500,000 on T.V. advertising. Once the signature gathering phase of the campaign was completed, the campaign concentrated on raising the \$500,000. The campaign met its fundraising goals for media buys, spending \$565,205.

In accordance with their oral contract, starting in August of 2000, Fenn & King, on behalf of Protect our Pets, began contacting media outlets about placing orders for T.V. Media Buys. These initial contacts were made at Fenn & King’s direction by various national media contact firms. In a document submitted to the PDC on November 3, 2000, Protect our Pets acknowledged that Fenn & King had contacted various T.V. stations placing orders for advertising as early as August 31, 2000 with an estimated value of \$500,150. Orders were placed on various dates between August 31 and November 3, 2000 for ads that ran between October 20 and November 6, 2000. On October 20, 2000, political ads paid for and sponsored by Protect Our Pets began running in the Spokane, Yakima and Seattle markets. The ads publicized the committee’s support of I-713.

Lisa Wathne stated that Fenn & King traveled to Washington State in late September or early October, 2000 to produce the T.V. ads. On October 16, 2000, Fenn and King sent a memo to Protect our Pets requesting payment of \$535,205 for media buys. A second memo requesting \$20,000 for production costs was sent to Protect our Pets on October 18, 2000. Protect our Pets paid Fenn & King \$535,205 on October 18, 2000 and an additional \$30,000 on November 3, 2000 to pay for production costs and to purchase “T.V. Media Buys.”

Staff Addendum to Report of Investigation – Following the October 18th brief enforcement hearing, Suemary Trobaugh of the PDC staff contacted several T.V. stations concerning each station’s cancellation policy and to learn whether the policy was communicated to Protect our Pets through Fenn & King. In general, the television stations operate under a two-week notification policy, by which an entity may cancel advertisements more than two weeks before the scheduled run dates without incurring an obligation to pay for the airtime. If the entity does not provide a two-week cancellation notice, they are charged for the advertising time the station is unable to re-fill.

There was some disagreement between stations contacted as to whether the two-week cancellation policy applies to political ads. Some of the stations said that for political advertising payment is required before the ad runs and said the two-week cancellation policy does not apply. However, staff received documentation from KIRO of Seattle and KIMA of Yakima of each station’s two-week cancellation policy, but neither station could provide evidence that Fenn & King received this documentation. Some of the stations said they had a two-week cancellation policy, but said it is generally communicated orally and not through a formal written contract. Some stations said it is not mentioned unless the buyer cancels within two weeks of a run-date. In addition, some stations apply the two-week cancellation policy on a case by case basis, depending on the relationship with the client. None of the stations could provide evidence that they had informed Fenn and King that they were enforcing a two-week cancellation policy. Staff also contacted Peter Fenn who stated that he had no knowledge of a two-week cancellation policy by any of the stations used to run ads for Protect our Pets.

Protect Our Pets filed a C-4 report on October 26, 2000 covering contribution and expenditure activity from October 13 - 26, 2000. This report listed an expenditure of \$535,205.00 paid on October 18, 2000 to Fenn & King with “T.V. Media Buy” listed as the purpose without a breakdown of the cost per station.

On November 3, 2000, Protect Our Pets submitted an amended C-4 report covering the period of October 13 - 26, 2000. This report included liabilities of \$500,150 and included an attached Schedule B listing an August 31, 2000 “Order Placed or Obligation” to Fenn Communications for \$500,150 described as “Media Buy.” An attached memo provided a station-by-station breakdown, which included TV stations, dates, and cost of the advertisements. The memo failed to include information concerning advertisements placed with KCPQ, the Fox affiliate in Seattle. Orders were placed with KCPQ totaling \$61,200 on approximately September 5, 2000. The ads ran between October 23 and November 6, 2000.